

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
COUNTY OF MECKLENBURG)	FCC File No. 0000598246
)	
Request for Waiver of General Category Freeze to)	
Permit licensure of 800 MHz General Category)	
Station in Charlotte, N.C.)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 5, 2002

Released: August 8, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a request by the County of Mecklenburg, North Carolina (Mecklenburg) for a waiver of Sections 90.683(b), 90.615, 90.617(d) and 90.681¹ or Section 1.949² of the Commission's Rules.³ Mecklenburg requests the waiver to permit it to obtain a license to operate an 800 MHz General Category⁴ Station in Charlotte, North Carolina.⁵ Specifically, Mecklenburg seeks replacement of an expired license for Station WNUL988, Charlotte, North Carolina.⁶ Mecklenburg applied for a new license through a December 18, 2001

¹ 47 C.F.R. §§ 90.683(b), 90.615, 90.617(d) and 90.681.

² 47 C.F.R. § 1.949.

³ Letter, dated May 30, 2002, from John E. Logan, Special Counsel for Mecklenburg County to John Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau dated May 30, 2002 (May 30, 2002 letter).

⁴ The General Category is comprised of one hundred and fifty contiguous 25 KHz channels in the 800 MHz Band. *See* 47 C.F.R. § 90.615.

⁵ Letter, dated July 30, 2001, from Gordon S. Walker, Mecklenburg County, NC to Licensing and Technical Analysis Branch, Federal Communications Commission filed with December 18, 2001 application for new license in 800 MHz General Category Channels (Application).

⁶ *Id.* On July 30, 2001, Mecklenburg petitioned for a waiver of 47 C.F.R. §§ 1.949(a) and 1.955(a)(1) to allow "reinstatement" of its license for Station WNUL988. *See* Letter, dated July 30, 2001, from Gordon S. Walker, Mecklenburg Telecommunications Manager. This petition for reinstatement of Station WNUL988 is superseded and made moot by the subsequent application for a new station in the 800 MHz General Category channels. Thus, we do not address the grounds for the petition for reinstatement contained in Mecklenburg's July 30, 2001 letter. Our decision need consider only the waiver request for grant of a new license.

application for frequencies in the 800 MHz General Category channels.⁷ For the reasons discussed herein, we grant Mecklenburg's waiver request.

II. BACKGROUND

2. In 1994, the Commission proposed a new licensing framework for Specialized Mobile Radio (SMR) systems in the 800 MHz band.⁸ After release of the *Further Notice*, there was a significant increase in the number of requests for General Category channels made by SMR applicants and licensees. On October 4, 1995, the Wireless Telecommunications Bureau suspended the filing of new applications for 800 MHz General Category channels (freeze) to ensure that resolution of the spectrum allocation issues raised in the *Further Notice* would not be compromised.⁹ The Commission subsequently redesignated the General Category channels exclusively to the 800 MHz SMR service, whereby mutually exclusive initial applications would be subject to competitive bidding, and excluded private land mobile radio (PLMR) licensees from eligibility for this spectrum.¹⁰ On reconsideration, however, the Commission reversed its decision concerning eligibility and reinstated the eligibility of PLMR applicants for General Category Channels.¹¹ The Commission also partially lifted the freeze on General Category channels to permit potential Economic Area (EA) applicants¹² to relocate incumbents from the upper 10 MHz block of 800 MHz spectrum to the General Category channels.¹³ In all other respects, the Commission maintained the freeze so as not to frustrate its efforts regarding future licensing of General Category channels.¹⁴

3. On March 6, 2001, Mecklenburg's authorization for Station WNUL988, which operated on channels 851.3375, 851.3625, 852.3375, 852.3625 and 853.3375 MHz, expired. On December 18, 2001, Mecklenburg filed a new application for an authorization to operate a Public Safety Pool Station in the Charlotte, North Carolina area on General Category frequencies

⁷ See FCC File No. 0000598246.

⁸ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Further Notice of Proposed Rulemaking*, PR Docket No. 93-144, PP Docket No. 93-253, 10 FCC Rcd 7970 (1994) (*Further Notice*).

⁹ See Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz bands, *Order*, 10 FCC Rcd 13190 (WTB 1995).

¹⁰ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of the SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, *Eighth Report and Order* and *Second Further Notice of Proposed Rulemaking*, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket 93-253, 11 FCC Rcd 1463 (1995) (*800 MHz SMR Report and Order*), and *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972 (1997) (*800 MHz SMR Memorandum Opinion and Order*).

¹¹ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of the SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration*, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket 93-253, 12 FCC Rcd 9972, 9975 ¶ 4 (1997).

¹² In the *800 MHz SMR Report and Order*, the Commission adopted geographic licensing based on EAs for the upper 10 MHz of the 800 MHz SMR service. See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1484 ¶¶ 24-25. The U.S. Department of Commerce Bureau of Economic Analysis has established 172 EAs which cover the continental United States. See *Final Redefinition of the BEA Economic Areas*, 60 Fed. Reg. 31114 (Mar. 10, 1995).

¹³ See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1508 ¶¶ 74-75.

¹⁴ *Id.* at 1509 ¶ 76.

851.3375, 851.3625, 852.3375, 852.3625 and 853.3375 MHz.¹⁵ In its application, Mecklenburg asserts that the instant channels are critical to the County's public safety communications system, which is used by police, fire, and medical, as well as other safety organizations that rely on the Station for emergency communications.¹⁶ The North Carolina Department of Crime Control & Public Safety Division of the State Highway Patrol states that the instant frequencies, combined with other current licenses, form the backbone of North Carolina's largest 800 MHz public safety system and support over 8500 units owned and operated by the County of Mecklenburg and the City of Charlotte (Charlotte).¹⁷

4. In a February 21, 2002 letter, Mecklenburg supplemented its renewal request by explaining that the station serves an urban region containing 6.3 million people within a 100-mile radius of Charlotte. This region is a major crossroad of commerce, transportation, rail and highway infrastructure and facilities.¹⁸ Mecklenburg further asserts that the frequencies sought are a critical part of the emergency communications for police, fire, and emergency medical services in downtown Charlotte, N.C.¹⁹ Mecklenburg explains that the frequencies are part of a system designed to operate in a difficult environment with numerous high rise buildings and steel structures.²⁰ In addition, two nuclear plants are near downtown Charlotte. Specifically, the McGuire Plant is approximately seventeen miles away and the Catawba Plant, in York County, is approximately twenty-five miles away.²¹ The frequencies are critical to enhancing the County's wireless infrastructure.²²

5. Nextel Communications, Inc. through its wholly-owned subsidiary, Nextel Spectrum Acquisition Corp. is the EA licensee of EA 023 (Charlotte) Blocks D, E and EE, which contain the five frequencies (851.3375, 851.3625, 852.3375, 852.3625 and 853.3375 MHz) on which Mecklenburg seeks to operate.²³ Mecklenburg asserts that Nextel, the EA licensee, supports a grant of Mecklenburg's application.²⁴ Nextel concurs with Mecklenburg's operation on the instant frequencies because of the public safety nature of the station's use.²⁵

¹⁵ FCC File No. 0000598246.

¹⁶ *Id.*

¹⁷ Letter, dated February 6, 2002, from Harold Meacombs of the North Carolina Department of Crime Control & Public Safety Division of the State Highway Patrol to Wendy Caruthers, APCO-AFC, Daytona Beach, Florida. This letter was included with the request for a Special Temporary Authorization filed by Mecklenburg.

¹⁸ Letter, dated February 21, 2002, from John E. Logan, Special Counsel to the County of Mecklenburg, North Carolina to John Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See Letter, dated July 31, 2001, from James B. Goldstein, Regulatory Attorney – Government Affairs, Nextel Communications to the Licensing & Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission (Nextel Letter).

²⁴ Walker Letter, *supra*.

²⁵ Nextel Letter.

6. In its May 30, 2002 letter, Mecklenburg sets forth the efforts it has made to ensure future compliance with the Commission's rules. Mecklenburg had its license application frequency coordinated, obtained and timely renewed an STA authorizing it to continue operating on the subject frequencies. Mecklenburg also conferred with both the Association of Public-Safety Communications Officials and the Chair of the 800 MHz Regional Planning Committee to ensure effective future license administration, and hired both a spectrum resources service and legal representation to facilitate compliance. Lastly, as stated above, Mecklenburg obtained the consent of Nextel, the affected EA licensee in this matter.

III. DISCUSSION

7. The Commission will grant a waiver of its rules if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.²⁶ In this case, after Mecklenburg let its license expire, Nextel obtained the right to operate on these channels pursuant to its EA licenses. Mecklenburg therefore requires a waiver of Section 90.683(b) of the Commission's rules to obtain a new authorization for its continued operations on the subject frequencies. Mecklenburg, a public safety entity, also requires a waiver of Sections 90.615, 90.617(d), and 90.681 of the Commission's Rules, which collectively make these frequencies available for licensing only on a geographic area basis.²⁷

8. The purpose of the rules for which a waiver is needed is to provide a fair and equitable balance between competing interests of 800 MHz licensees seeking to provide local service and those seeking to provide geographic area service.²⁸ The rules promote competition while providing opportunities for incumbents to continue to pursue their business plans, allowing licensees the opportunity to deploy a multiplicity of technologies and promote technical innovation.²⁹ The rules also further the goal of regulatory symmetry between 800 MHz licensees and other competing providers of Commercial Mobile Radio Services.³⁰

9. In this case, we conclude that Mecklenburg has demonstrated that grant of a waiver is warranted under the first prong of the waiver standard. We conclude that the underlying purpose of the rules would not be frustrated in this instance because Nextel, the EA licensee for the subject frequencies, consents to the grant of Mecklenburg's application. Further, the purpose of the rules would not be compromised by grant of a waiver because Nextel, through its EA license, has extensive authority to operate throughout the EA but has voluntarily elected to accommodate Mecklenburg's proposed continued operations. Moreover, Nextel could choose to partition or disaggregate its EA license;³¹ thus, Nextel could have elected to enter into a sharing arrangement with Mecklenburg. We also consider it significant that Mecklenburg had a prior license authorizing its operation on the instant frequencies in the 800 MHz General Category. If Mecklenburg had not allowed its license to expire, Nextel would have been required to protect

²⁶ See 47 C.F.R. § 1.925(b)(3).

²⁷ See 47 C.F.R. §§ 90.615, 90.617(d), 90.681.

²⁸ See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1468 ¶ 2.

²⁹ *Id.*

³⁰ *Id.*

³¹ See 47 C.F.R. § 90.911.

Mecklenburg's prior operations.³² Thus, granting Mecklenburg request will be not increase the actual number of station licensees than there were at the time Nextel acquired its EA license.

10. We also conclude that grant of a waiver would be in the public interest. Mecklenburg has made a detailed showing that use of these frequencies are critical elements of Mecklenburg's public safety communications system. We note that we have granted other waivers of the General Category freeze when applicants have demonstrated strong public interest reasons for a waiver and the affected EA licensees have not objected to the waiver.³³ We believe the same principles apply here. We conclude, based on the record before us, that the County of Mecklenburg, North Carolina's waiver request should be granted.

IV. ORDERING CLAUSES

11. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by the County of Mecklenburg, North Carolina on July 30, 2001 with respect to FCC File No. 0000598246 IS GRANTED.

12. IT IS FURTHER ORDERED, pursuant and Section 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(a), that the Licensing and Technical Analysis Branch SHALL PROCESS FCC File No. 0000598246 in accordance with this *Memorandum Opinion and Order*.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

³² See 47 C.F.R. § 90.693.

³³ See State of Florida, *Order*, 16 FCC Rcd 2174 (WTB PSPWD 2001); City of Denton, Texas, *Order*, 15 FCC Rcd 23643 (WTB PSPWD 2000).